

ADVISORY OPINION 2001-002

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

May 30, 2001

Hon. Neil P. Reiff
Sandler, Reiff & Young, P.C.
50 E Street, S.E., Suite 300
Washington, D.C. 20003

Dear Mr. Reiff:

This is in response to your request, on behalf of the Kentucky Democratic Party (“KDP”), for an advisory opinion regarding the application of KRS Chapter 121 to expenditures proposed to be made by the KDP in connection with lobbying the Kentucky legislature during the redistricting of congressional and legislative districts. You present three (3) specific questions, the Registry’s response to which follows:

(1) Are expenditures made by the KDP in connection with lobbying the Kentucky legislature in the upcoming redistricting of congressional and legislative districts by the legislature considered “allowable campaign expenditures” as defined by KRS § 121.175.

You ask whether the lobbying expenses proposed by the KDP are allowable campaign expenditures. You cite a prior Advisory Opinion, KREF Advisory Opinion 95-009, in which the Registry opined that a proposed expenditure by a registered permanent committee to oppose federal tort legislation was not an allowable campaign expenditure within the meaning of KRS 121.175. You classify the KDP as a committee for purposes of your question.

KRS 121.175 prohibits a committee, as defined under KRS 121.015(3), from making any expenditure that is not an allowable campaign expenditure. Allowable campaign expenditures mean, generally, “expenditures including reimbursement for actual expenses, made directly and primarily in support of or opposition to a candidate, constitutional amendment, or public question which will appear on the ballot...” KRS 121.175(1).

Under KRS 121.015(3), the term “committee” includes the executive committee of a political party.¹ The KDP has registered with the Registry the Kentucky State Democratic Executive Committee (“KSDEC”) as its state executive committee. The KSDEC may be distinguished from the KDP’s federally registered qualified party committee, the Kentucky State Democratic Central Executive Committee.

Pursuant to KRS 121.175, the KSDEC as the Kentucky-registered executive committee of the KDP may not permit its funds to be expended for any purpose other than allowable campaign expenditures. Consistent with KREF Advisory Opinion 95-009, expenses made in connection with the lobbying of the Kentucky legislature during the upcoming redistricting of legislative and congressional districts are not allowable campaign expenditures.

(2) If the answer to Question 1 is No, may the KDP establish a separate segregated account for the purpose of raising and expending funds for the purposes of undertaking lobbying activities in Question 1 where such funds would not be subject to the prohibitions and limitations of Kentucky campaign finance laws?

You propose that if the expenses by the KDP as described in Question 1 are not allowable campaign expenditures, “it must follow that such expenditures are outside the scope of Kentucky election law,” and that the KDP should establish a separate, segregated account. You state that this approach is consistent with the Federal Election Commission’s (“FEC”) interpretation, citing FEC Advisory Opinion 1982-14.

While the FEC’s approach may be persuasive as to federal law, the Registry’s interpretation is based on KRS Chapter 121 and relevant case law. First, KRS 121.220(1) requires each committee to “designate one (1) primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the ... committee.” Therefore, under KRS Chapter 121, the KSDEC may not establish a separate account for the purposes outlined in Question 1.

Consistent with interpretations by the FEC, see, e.g., FEC Advisory Opinions 1981-35 and 1982-14, the Registry does not interpret KRS Chapter 121 to extend to lobbying activity relating to the Kentucky state legislature’s decisions on

¹ You also cite the term “permanent committee” in application to an executive committee of a political party. Note that the definition of “permanent committee” under KRS 121.015(3)(c) specifically excludes a party executive committee.

reapportionment. Although this lobbying activity may have political features, particularly as it affects political parties, it is not the election-influencing activity that is subject to KRS Chapter 121. Rather, the Kentucky General Assembly has assigned the regulation of lobbying activities, including the disclosure of disbursements, to the Legislative Ethics Commission. See, generally, Code of Ethics, KRS 6.601 to 6.859.

(3) *Would such an account be required to file disclosure statements with the KREF?*

As noted in question two, a separate account may not be established by KSDEC for the purpose of lobbying. However, this opinion does not address the establishment of a separate entity organized solely for the purpose of raising and expending funds to lobby the Kentucky legislature in the redistricting of congressional and legislative districts as a result of the 2000 Decennial Census.

This opinion reflects the Registry's consideration of the specific transactions posed by your letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,

Rosemary F. Center
General Counsel

Enclosures

RFC/jh

Cc: Registry Board Members
Sarah M. Jackson, Executive Director